

**CALIFORNIA COASTAL COMMISSION**

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**W19c**

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## APPEAL STAFF REPORT – DE NOVO HEARING

**Appeal number**.....A-3-SCO-02-117, Davenport Barn

**Applicant**.....David Luers

**Appellants**.....Commissioners Sara Wan and Pedro Nava; Sierra Club; Coastal Organizers and Advocates for Small Towns (COAST)

**Local government** .....Santa Cruz County

**Local decision**.....Approved with Conditions (November 13, 2002)

**Project location**.....Roughly one acre parcel located at the intersection of Old Coast Road, Davenport Avenue, and Highway One in the town of Davenport on Santa Cruz County's north coast.

**Project description**.....Demolish a deteriorated barn, remove a 5-foot diameter and approximately 70-foot tall eucalyptus tree, and construct a 3-story, roughly 6,400 square foot structure (4,316 square feet of enclosed interior space and 2,084 square feet of wrap-around decks/walkways) that would include two residential units and a retail sales operation (the project is roughly half residential and half retail), with an approximately 4,700 square foot 10-car parking lot and associated hardscape (patios and paths) and landscaping.

**File documents**.....Santa Cruz County Certified Local Coastal Program (LCP); Coastal Commission Appeal files A-3-SCO-02-088 (RMC Pacific Materials), A-3-SCO-00-106 (Licursi Forester's Hall), A-3-SCO-98-101 (Bailey-Steltenpohl); and Santa Cruz County CDP Application File 98-0234.

**Staff recommendation** ....**Denial**

**Summary of staff report and staff recommendation:** The Applicant proposes to demolish the badly deteriorated Davenport barn and construct a 3-story, roughly 6,400 square foot commercial/residential structure (4,316 square feet of enclosed interior space and 2,084 square feet of wrap-around decks and walkways in three levels) with associated hardscape (patios and pathways), and a roughly 4,700 square foot 10-car parking lot. The project is located at the intersection of Old Coast Road, Davenport Avenue, and Highway One in the town of Davenport on Santa Cruz County's north coast. Approximately  $\frac{3}{4}$  of the project site is made up of a willow riparian woodland that extends off-site and southeast to San Vicente Creek. A large (5-foot diameter, 70-foot tall) eucalyptus tree would be removed to make way for the new building. The project site is the gateway into Davenport along Highway One and is an important site in



**California Coastal Commission**

June 2003 Meeting in Long Beach

Staff: D.Carl Approved by:

A-3-SCO-02-117 Davenport barn DeNovo 6.11.2003.doc

this respect for Davenport's character as well as the character of the overall Highway One viewshed.

The LCP defines the site's willow riparian woodland as a type of riparian corridor, designates it as environmentally sensitive habitat area (ESHA), and protects it from development impacts by, among other things, requiring a 50-foot buffer and a 10-foot setback from the buffer (a total of a 60-foot setback). The proposed project includes a parking lot, a large 3-story structure, and associated hardscape within the LCP-required riparian setback/buffer area (ranging from a 0' setback for the parking lot up to a maximum setback of 32 feet for the main building). A discharge pipe would be placed within the riparian woodland itself. The riparian corridor is a valuable biological resource that serves as a wildlife refuge and transportation corridor extending from this site to San Vicente Creek. Project assessments indicate that listed species, including California red-legged frog, could be present. The LCP prohibits the placement of the discharge pipe in the ESHA. The LCP allows for exceptions to the 60 foot setback requirement subject to specific findings. Staff has concluded that the proposed project (and proposed reduced buffer) would adversely affect the riparian corridor and its biological value, and that there are feasible alternative projects that could respect the required buffer. As such, the exception findings cannot be made in this case and the project as proposed is inconsistent with the LCP's ESHA and riparian corridor policies.

The LCP also protects the Highway One viewshed and the small scale character of Davenport. The Applicant's site is one of the most visually prominent parcels in Davenport and is an important site in this respect for Davenport's character as well as the character of the overall Highway One viewshed. The subject site is located at the southern end of Davenport and the existing barn as well as any replacement development signals the gateway to the small town of Davenport to northbound travelers on Highway One. Thus the visual/character impacts of the proposed project are of significant concern.

The existing weathered and redwood-clad rustic barn (proposed for demolition) has long defined the gateway into Davenport along Highway One for northbound travelers since its construction in 1925. The proposed structure would not look like the existing barn, would be significantly more massive and taller than the barn and would redefine this critical gateway site. As shown in the proposed plans, the new structure would exceed the maximum height allowed in the commercial zone district (37 feet when 35 feet is the maximum in C-1 districts), would not meet front setback requirements, includes a stucco exterior for the first floor, and includes 3 stories when the LCP describes one or two stories as generally indicative of Davenport's small scale character. Other than the cement plant, there are no 3-story structures in Davenport and the proposed project would be the first. In fact, the overwhelming majority of structures in Davenport are 1-story. Even along the main Highway One commercial frontage, where one might expect larger commercial buildings, there is a fairly even mix of both 1-story and 2-story structures. The new parking lot would be placed immediately adjacent to Highway One, at a similar elevation, and would replace the weathered barn in the viewshed with a formal paved area and a line of parked cars. Staff has concluded that the proposed development is too large for the site, would negatively alter the Highway One viewshed, is not compatible with Davenport's character, and is inconsistent with the LCP's viewshed and Davenport character policies.

The LCP protects the water quality of the on-site riparian corridor, nearby San Vicente Creek, and the Pacific Ocean. The project site drains to the riparian corridor and onto San Vicente Creek and then to the Monterey Bay National Marine Sanctuary, and the proposed drainage system would direct runoff in this



same manner to and through these ESHAs. San Vicente Creek provides habitat for State and Federally listed species as such coho, steelhead, and red-legged frog and is considered ESHA by the LCP; Monterey Bay is the largest of 12 federally protected marine sanctuaries in the United States. The silt and grease trap proposed is not sufficient to adequately filter and treat the project's runoff, and protect the significant downstream resources from polluted runoff impacts as directed by the LCP.

The LCP requires protection and enhancement of public access and recreation areas, including the Highway One corridor that is protected for recreational access, and targets Davenport for specific enhancements, such as clear parking places and circulation. The proposed parking lot would increase traffic at an already confused intersection (Highway One intersects Davenport Avenue and Old Coast Road at the same point) that may be altered at Caltrans behest to provide clearer ingress and egress across Highway One from this site (and thus further increase the variety of vehicular movements here). The project intersection is located at the fringe of Davenport's main commercial frontage that is already poorly integrated with Highway One (i.e., with pull-off and on parking immediately adjacent to the Highway). Davenport itself is growing as a commercial visitor destination (including recently permitted visitor serving and commercial development across Highway One from Davenport Avenue). Staff analysis is that vehicular access to and from the project would increase congestion and decrease safety at an already less than optimum intersection, particularly on a cumulative basis when considered in relation to already permitted and planned development in Davenport, and that this would adversely impact access along Highway One, would confuse circulation within Davenport, and adversely affect Davenport's character inconsistent with the LCP.

The LCP protects San Vicente Creek for habitat and water supply purposes. The proposed project would require 3 new water hookups from the local water purveyor who in turn gets its water from San Vicente Creek. The impact of current water withdrawals on San Vicente Creek habitat resources is not well understood, although indications are that in-stream flows are not optimum for listed species habitat needs. The incremental addition attributable to the approved project may exacerbate any such impacts or cause impacts of its own. The same can be said for the 3 new wastewater hookups associated with the proposed project. There is currently no water use and no wastewater generation on site (because the barn has long been abandoned). Overall the impacts associated with the existing water supply and wastewater disposal system in Davenport are not clear and, as a result, it is difficult to assess the incremental impact of this project in relation to them. That said, the service provider in this case indicated that it would serve the proposed project, presumably based on an analysis of the type of LCP water and wastewater capacity issues associated with that decision. It would appear beyond the scope of this individual Applicant to resolve the larger water supply, water withdrawal, and wastewater service issues that exist in Davenport. Because the proposed project has received the LCP-required will serve commitments, the proposed project is consistent with the LCP's public service water and wastewater requirements.

In sum, the proposed project is overly ambitious in scale for the site and surrounding resources. Most important, it encroaches into a required riparian woodland habitat buffer. It will also adversely impact the character of Davenport and the Highway One viewshed, negatively impact circulation and Highway One access through Davenport, and not adequately protect water quality. The project as a whole has not been developed in a manner mindful of the site constraints. Staff has concluded that the proposed project is



inconsistent with LCP policies.

Alternative projects likely could be found consistent with the LCP by maintaining the required riparian setback and by developing a smaller scale development with a lesser intensity of use (and with a corresponding reduced intensity of parking, traffic generation, polluted runoff generation, water use, and wastewater generation). Such smaller scale development could use design elements to clearly reflect Davenport's built environment and aesthetic, as well as to protect the adjacent riparian corridor, and be sensitive to the requirements of this special gateway location adjacent to the Highway One corridor. The proposed project does not meet these parameters, and it would require fundamental changes in the project design to do so. Because of the degree to which the proposed project would need to be modified to be consistent with the LCP, Staff believes it is inappropriate to attempt to craft conditions that would bring the project into conformance with the LCP. Rather, it is incumbent on the Applicant to propose an alternate project mindful of site constraints that can go through a normal coastal permit review at the County. In addition to this staff report, the Applicant may find useful guidance from the comments that Staff has provided over the past 3 years.

In conclusion, Staff recommends that the Commission deny the proposed project.

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## 1. Project Procedural History

Santa Cruz County has a certified LCP, and this proposed project was reviewed for several years in a local coastal permit process before the County took action on it in late 2002. The Commission participated in this local review process, including providing directive comments through a series of Staff letters, emails, meetings (with the Applicant and the County), site visits, and phone conversations (see, for example, exhibit J for Commission staff local review comment letters). At the conclusion of the County's process, the Planning Commission approved the proposed project by a 3-2 vote. The Planning Commission's approval was then appealed to the Commission by Commissioners Sara Wan and Pedro Nava, the Sierra Club, and Coastal Organizers and Advocates for Small Towns (COAST). On February 6, 2003, the Coastal Commission found that a substantial issue exists with respect to the proposed project's



conformance with the LCP and took jurisdiction over the coastal development permit for the proposed project.

## 2. Staff Recommendation on Coastal Development Permit

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development.

***Motion.** I move that the Commission approve Coastal Development Permit Number A-3-SCO-02-117 pursuant to the staff recommendation.*

***Staff Recommendation of Denial.** Staff recommends a **no** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.*

***Resolution To Deny The Permit.** The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of the Santa Cruz County Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.*

## Recommended Findings and Declarations

The Commission finds and declares as follows:

### 3. Project Description

#### A. Project Location

The proposed project is located in the unincorporated town of Davenport along Santa Cruz County's rugged north coast. See exhibits A, B, and C for illustrative project location information.

#### Santa Cruz County Regional Setting

Santa Cruz County is located on California's central coast and is bordered to the north and south by San Mateo and Monterey Counties (see exhibit A). The County's shoreline includes the northern half of the Monterey Bay and the rugged north coast extending to San Mateo County along the Pacific Ocean. The County's coastal zone resources are varied and oftentimes spectacular, including the Santa Cruz



Mountains coastal range and its vast forests and streams; an eclectic collection of shoreline environments ranging from craggy outcrops to vast sandy beaches (in both urban and more rural locations); numerous coastal wetland, lagoon and slough systems; habitats for an amazing variety and number of endangered species; water and shore oriented recreational and commercial pursuits, including world class surfing areas; internationally renowned marine research facilities and programs; special coastal communities; vast State Park lands; and the Monterey Bay itself. The unique grandeur of the region and its national significance was formally recognized in 1992 when the area offshore of the County became part of the Monterey Bay National Marine Sanctuary – the largest of the 12 such federally protected marine sanctuaries in the nation.

Santa Cruz County's rugged mountain and coastal setting, its generally mild climate, and its well-honed cultural identity combine to make the area a desirable place to both live and visit. As a result, the County has seen extensive development and regional growth over the years that the California Coastal Management Program has been in place. In fact, Santa Cruz County's population has more than doubled since 1970 alone with current census estimates indicating that the County is currently home to over one-quarter of a million persons.<sup>1</sup> This level of growth not only increases the regional need for housing, jobs, roads, urban services, infrastructure, and community services, but also the need for park areas, recreational facilities, and visitor serving amenities. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, and many closer than that, coastal zone resources are a critical element in helping to meet these needs. Furthermore, with the shoreline itself (and its parks, beaches, trails, etc.) attracting visitors into the region, an even greater pressure is felt at coastal recreational areas and visitor destinations like Davenport. With the Santa Cruz County shoreline and beaches providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the large population centers of the San Francisco Bay area and the Silicon Valley nearby, this type of resource pressure is particularly evident in coastal Santa Cruz County.

#### Davenport Area

The proposed development is located in the unincorporated Town of Davenport, approximately ten miles north of the City of Santa Cruz. Davenport is a small coastal enclave in Santa Cruz County's North Coast planning area and is the only concentrated development area along Highway One between Santa Cruz and Half Moon Bay. This larger stretch of California's coastline is characterized by lush agricultural fields and extensive State Park and other undeveloped public land holdings. Davenport provides a convenient stopping place and a visitor destination for travelers along this mostly undeveloped coastline.

#### Proposed Development Site

The project is located at the intersection of Old Coast Road, Davenport Avenue, and Highway One in Davenport. The project is located on a "gateway" site on the inland side of Highway One as one enters Davenport headed north, and is an important site in this respect for Davenport's character as well as the character of the overall Highway One viewshed. The roughly one acre parcel includes a mostly level bench area (roughly a quarter acre) covered in weedy vegetation and including several large eucalyptus

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<sup>1</sup> Census data from 1970 shows Santa Cruz County with 123,790 persons; California Department of Finance estimates for the 2000 census indicate that over 255,000 persons reside in Santa Cruz County.



trees, bordered by a steep riparian woodland area that dominates the remainder of the site as it slopes away from Old Coast Road towards the southeast. The edge of the riparian woodland is roughly located along the break in slope below the bench area, and is comprised primarily of willows. The riparian area extends down to a lower bench area above San Vicente Creek at the end of Fair Avenue, and drains through a highway-side woodland to the Creek itself to the southeast. The upper bench area is currently partially occupied with a deteriorated and weathered redwood-clad barn, no longer in use, that has been at this location since 1925. The barn apparently originally housed a box making business, but this use has long since been abandoned and the barn has been unoccupied for decades, perhaps nearly as long as it has been in existence.

See exhibit B and C for graphics showing the subject site in relation to the various features described above.

## B. Project Description

The Applicant proposes to demolish the existing barn, remove a 5-foot diameter and approximately 70-foot tall eucalyptus tree, and to construct a new 3-story commercial and residential (2 residential units) structure with wrap around decks slightly inland from the current barn's location. A 10-space parking lot would be constructed on that side of the property currently occupied by the barn (and nearest Highway One), and landscaping, pathways, patios, and associated fencing would be installed. See exhibit D for the proposed project plans.

# 4. Coastal Development Permit Determination

## A. Applicable Policies

LCP policy areas applicable to the proposed project include those involving the protection of riparian corridors, ESHA, Highway One and Davenport viewshed, Davenport's community character, Highway One and Davenport public access and circulation, water quality, water supply, wastewater disposal, and San Vicente Creek. Within these general issue areas, there are a large number of individual LCP policies that are applicable. Part of the reason for this is because the range of coastal resources involved (i.e., ESHA, public access and recreation, water quality, water supply, viewshed/character, etc.), and part of the reason is because of the way the certified LCP is constructed where there are a significant number of policies within each identified issue area, and then other policies in different LCP issue areas that also involve other issue areas (e.g., habitat policies that include water quality requirements, and vis versa). In addition, there are a number of Davenport specific policies because the town is an LCP-designated Coastal Special Community. In terms of habitat resources, there are also two zoning chapters that include requirements for protecting streams, riparian corridors, and ESHA.

For brevity's sake in these findings, applicable policies are shown in exhibit M, and are incorporated by reference into these findings. Specific application of the most pertinent LCP policies to this proposed project is discussed below.





## B. Analysis of Consistency with Applicable LCP Policies

As detailed below, the proposed project is inconsistent with the LCP for a variety of reasons

### 1. Riparian Corridor Protection

#### LCP Requirements

The LCP designates the on-site riparian woodland as ESHA as that term is understood within a Coastal Act context (LUP Policy 5.1.2(i) and 5.1.3, IP Chapter 16.32).<sup>2</sup> The LCP defines riparian woodland as a type of riparian corridor and protects these ESHAs from development impacts by, among other things, requiring a 50-foot buffer and a 10-foot setback from the buffer (a total of 60 feet) (LCP policies including LUP Policies 5.1 and 5.2 et seq, and LCP Zoning Chapters 16.30 and 16.32). Exceptions to the riparian setback requirements are only allowed under very limited circumstances, and are subject to making specific exception findings (IP Sections 16.30.060). In fact, the LCP indicates that development of riparian corridors should be avoided “to the greatest extent allowed by law” (LUP 5.2 Program a). See exhibit M for applicable LCP policies.

The proposed project includes a parking lot, a 3-story structure, and associated hardscape within the required riparian woodland setback/buffer area; with setbacks of 0’ for the parking lot, about 32 feet for the main building, and about 20 feet for the associated hard patio area (see annotated site plan on page 2 of exhibit D). A discharge pipe would be placed within the riparian woodland itself (extending from the edge of the plateau to the base of the riparian slope). Since the site is currently unused and has been for many years, the project will introduce significant new residential and commercial structures, noise, lights, activities, and runoff immediately adjacent and into the riparian corridor. The purpose of the LCP-required 60-foot buffer is to help reduce these types of edge effects on the existing riparian corridor (see also below).

The Applicant contends that the riparian woodland is not of high resource value, and has submitted a biological assessment and a hydrological assessment that he believes shows this to be the case.<sup>3</sup> Based on these reports, and because he also contends that there are no alternatives available that can respect the required riparian setback, the Applicant asserts that a reduced setback is warranted and should be granted to allow for his proposed project.<sup>4</sup>

However, Commission biological and planning staff have reviewed the Applicant’s reports, have visited and assessed the site, and have concluded that: (1) the riparian woodland is a valuable ESHA resource worthy of the LCP protection prescribed for it; and (2) an exception to the riparian setback requirement is not appropriate to allow for the proposed project, as follows.

<sup>2</sup> That is, the LCP cross-references the Coastal Act’s ESHA definition and application when defining these areas as Environmentally Sensitive Habitats and ESHA in LUP Policy 5.1.3 and IP Section 16.32.040.

<sup>3</sup> Riparian Hydrology Evaluation by Kittleson Environmental Consulting (dated January 17, 2003) and Biological Assessment by Bryan Mori Biological Consulting Services (dated January 15, 2003).

<sup>4</sup> See exhibit F for the Applicant’s January 28, 2003 submittal, and see exhibit G for Commission staff’s response to it. Both of these exhibits were considered by the Commission at the February 6, 2003 substantial issue hearing for this matter.



### Riparian Woodland is a Valuable ESHA Resource

The riparian woodland occupies roughly  $\frac{3}{4}$  of an acre on this site and is functionally connected by a band of willow riparian woodland to the larger San Vicente Creek corridor adjacent to the southeast. San Vicente Creek is widely recognized as a critical habitat for such State and Federally listed species as coho, steelhead, and California red-legged frog (CRLF); all of these species are present within the Creek proper and at the intersection of it with Highway One immediately southeast of the site.<sup>5</sup> The riparian woodland serves as both a wildlife corridor and refuge extending from this site to San Vicente Creek. In addition to other species that may be present, CDFG and the County both concluded that CRLF could be expected to migrate from the Creek through the riparian corridor and across the project site; CDFG further recommended that consultation with United States Fish and Wildlife Service (USFWS) regarding impacts due to the proposed project was warranted in this case (although there is no evidence in the record to indicate that USFWS was consulted). The County concluded that the riparian corridor was ESHA. The Commission's biological staff have assessed the site and have concluded that the riparian corridor is a valuable resource worthy of the LCP ESHA protection prescribed for it, the purpose of which is "to preserve, protect, and restore" resources associated with the corridor.<sup>6</sup>

The Applicant's consulting biologist agrees that riparian habitat value in general is "among the highest of all plant communities in California, supporting a greater abundance and diversity of wildlife (especially bird species) than other habitats" whose "importance...is further underscored by its limited statewide distribution." Although the consulting biologist subsequently downplays the value of the riparian habitat in this case, he does indicate that this woodland is expected to support a variety of nesting birds, including perhaps nesting habitat for riparian-obligate species (such as Swainson's thrush and yellow warbler), and that species richness and abundance may be greater during spring and fall migration when migrating bird species are likely to inhabit the woodland.<sup>7</sup> He also includes a series of mitigation recommendations to address impacts to CRLF, San Francisco Dusky footed woodrats (a State species of special concern), and nesting birds (including species protected by the Migratory Bird Treaty Act) in the riparian corridor. The California Department of Fish and Game likewise required mitigation for CRLF in this project.<sup>8</sup> The County required that an exclusionary fence be installed along the edge of the plateau so that CRLF moving through the riparian corridor would be blocked from traversing the plateau area (where the main development is proposed). The fact that such listed species mitigation measures have been required and/or recommended is an indicator that the riparian corridor has a high resource value, and certainly supports application of the LCP's setback requirements to it in order to preserve and foster this resource.

In addition, the Applicant's consultants base much of their riparian corridor resource value assessment on the lack of surface water on the Applicant's site. However, surface water is but one indicator of a riparian corridor. The presence of the willow riparian woodland is indicative of hydrology of some sort (or else

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<sup>5</sup> San Vicente Creek proper is located roughly 275 feet southeast from the project site (and roughly 400 feet from the plateau area). The larger San Vicente Creek riparian corridor (that frames the Creek proper) is located roughly 100 feet southeast of the project site, and roughly 225 feet from the plateau area where development is proposed.

<sup>6</sup> Note that in addition to protection of existing resource value, the LCP indicates that restoring riparian corridors (including enhancing or bringing back value) is also a stated purpose of the ordinance. See LCP Chapter 16.30, including section 16.30.010 (Purpose).

<sup>7</sup> His site visit evaluation in this case was done during winter.

<sup>8</sup> In a May 14, 2002 letter on the County's CEQA document; see exhibit K.



the willows wouldn't be there), most likely sub-surface hydrology if there aren't other above-ground indications. Moreover, in contrast to some of the Applicant's consultants' new assertions regarding surface water flows, the County's file on this project (including its environmental document) indicate that surface water from this site flows over ground through the riparian woodland and to San Vicente Creek (for example, see Applicant's drainage site plan on page 11 of exhibit D).

In sum, the riparian corridor represents a valuable biological resource. It is identified in the LCP as ESHA as that term is understood in a Coastal Act context. The LCP prescribes setbacks from it in order to mitigate for the harm and disruption to that resource due to proposed development.<sup>9</sup>

### Project Impacts

The riparian corridor is a relatively undisturbed environment, home to any number of migratory, seasonal and year-round inhabitants (including apparently some State and Federally-listed endangered species) who are passing through, foraging, nesting, hunting, and resting in this area day and night. The increased human activity from the proposed project would be visible and audible within the riparian corridor. Since half of the proposed project is for residential use, and depending on the commercial hours as well, the noise, lights, and activities would be present (at varying levels) all times of the day and night and all year. There is also the potential for larger events (like residential parties, or commercial special events), when such activities and impacts would increase. In addition, the discharge pipe proposed for inside of the riparian woodland would both adversely impact wildlife during its construction, and permanently displace a portion of it where the pipe would be installed.

The introduction of a commercial and residential use of the magnitude proposed right up to the edge of the riparian corridor would be expected to reduce the abundance and health of wildlife in the corridor due to the fact that there is no activity currently at the site (and hasn't been for many years) and the proposed project would increase noise, lights, and activities immediately adjacent to the riparian corridor and extending up to 3 stories. The proposed building elevation facing the riparian corridor has not been configured to screen the corridor in any way, rather it would include many residential and commercial windows, decks, and doors, and the parking lot would extend directly adjacent to the corridor. The project includes a 6 foot high fence and stucco wall along the majority of the break in slope at the southeast edge of the plateau that will help to reduce impacts a limited degree, but it does not provide the level of buffering that the required setback does.<sup>10</sup> In fact, the fence/wall would be located at a lower elevation than the rest of the proposed site development area and any screening that it might provide is corresponding reduced because of this; the fence would also be at a lower elevation than would the riparian corridor canopy. Such fences are typically placed along the development side of the required buffer (and not at the habitat's edge as proposed here).

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<sup>9</sup> See also exhibit F for the Applicant's January 28, 2003 submittal, and exhibit G for Commission Staff's response to it. Both of these exhibits were considered by the Commission at the February 6, 2003 substantial issue hearing.

<sup>10</sup> Note that the wall/fence was required as a sound barrier to reduce Highway noise as heard by users of the proposed facility. It was not designed nor intended as a barrier to reduce project activity from being heard and seen by wildlife within the riparian corridor, although it would perform a limited function in this sense. It is also possible that the fence/wall could act to amplify Highway One noise within the riparian corridor, although this was not evaluated in the Applicant's noise analysis (nor were any impacts of noise on wildlife receptors in the riparian woodland evaluated).



The function of the existing riparian corridor buffer (i.e., the riparian corridor and its buffer together currently provide for wildlife movement) would cease because the plateau would be replaced by urban development and fenced. Any animals using the existing buffer area (birds, CRLF, Dusky footed woodrats, etc.) would thus be further confined into the downslope riparian woodland, crowding wildlife already present there and potentially leading to displacement if carrying capacity is exceeded. In addition, within the then confined riparian woodland area, the expected additional noise, lights, and activities due to the proposed project could cause many of the birds and animals to leave altogether. For the species not displaced entirely, resting wildlife would expend energy on wasted alarm movements in response to the human activities. Such energy is at a premium if predators are present, and even more at a premium during breeding season when the birds and animals are maintaining nests and territory, as well as foraging and feeding young. The wasted energy could have a detrimental effect on reproductive success and behavior, as well as the loss of foraging time and/or breeding interaction. The cumulative effect of constant impacts (such as nighttime lighting) and multiple impacts from human noises, lights, and activities – particularly stronger stimuli such as loud noises and fast movements – would lead to decreased wildlife abundance and vigor in the riparian woodland.

In addition, the site is currently almost exclusively pervious, with the exception of the existing barn's approximately 2,600 square foot footprint. The proposed project would include roughly 7,000 square feet or more of impervious surface (nearly tripling the amount of impervious surface on the site). The additional area that would be covered in impervious surface functions as a recharge area of sorts – potentially a significant recharge area for the willows in the riparian corridor if subsurface hydrology is their primary water source (and not over ground, as discussed above).<sup>11</sup> To the extent that groundwater supports the willow riparian community (less so than surface flows), the reduction in recharge area would be expected to reduce the amount of water available to support the willows, and to correspondingly reduce the size, extent, and health of the riparian habitat associated with them. Coupled with both the displacement of the existing corridor and the introduction of project noise, lights, and activities into the required buffer and the riparian woodland, the result would be riparian habitat degradation on site. Because the riparian corridor on site extends off site to San Vicente Creek, the larger riparian corridor resource as a whole (i.e., the Creek corridor and the finger extending from it onto this site) would likewise be degraded.

Water quality impacts are detailed separately in finding 4 that follows.

#### Pipe in ESHA Prohibited

The LCP does not allow for non-resource dependent development within the riparian woodland ESHA, except in very limited circumstances (LCP policy 5.1.3).<sup>12</sup> The drainage pipe proposed for inside of the riparian woodland would adversely impact wildlife during its construction, permanently displace a portion of it where the pipe would be installed, and deliver partially-filtered polluted runoff into the

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<sup>11</sup> Note that the southeastern half of the site (containing the riparian corridor) is mapped as a Groundwater Recharge Area by the County LCP.

<sup>12</sup> Exceptions are allowed only when there is a beneficial public purpose, there are no other feasible alternatives, all adverse impacts are mitigated, there is a takings issue, and it is consistent with the LCP's ESHA-protective policies (see LCP Policies in exhibit M).



ESHA (see finding 4 that follows for detail on water quality impacts). The proposed project pipe does meet the limited exception criteria and cannot be found consistent with the LCP.

#### Buffers/Setbacks

Buffers, such as the 60 foot buffer required by the LCP in this case, function as important transition zones between development and adjacent habitat areas, serving to protect the habitat from the direct effects of nearby disturbance. Buffer areas provide protection for habitat from adjacent development in a number of ways (e.g., sheer distance, buffer configuration, topographic changes, vegetation in the buffer, fences at buffer edges, etc.), where the methods chosen depend in part on the desired functions of the buffer (e.g., reducing human impacts, preserving habitat, water quality filtration, etc.). When intensive urban uses are proposed adjacent to habitat areas (such as the commercial and residential project in this case), a primary buffering method is to provide adequate distance so as to limit direct contact and reduce the conveyance of human-generated impacts (such as noise, lights, movements, odors, debris, and other edge effects); substantial vegetation planted or present within the buffer can help to reduce the absolute distance necessary for the buffer width.

Depending upon their design, buffers can also be a functional part of the ESHA acting as a transition zone from the more sensitive to less sensitive parts of a site. Moreover, species numbers of both plants and animals increase at buffer edges, due to the overlap from adjacent habitats and the creation of unique edge habitat niches. In addition, buffers can reduce the velocity of surface runoff from adjacent development and provide an area for infiltration of runoff, removing particulate contaminants and protecting against sedimentation and erosion in the ESHA itself. Similarly, these areas can increase the retention period of water in the adjacent riparian area by increasing local groundwater recharge through percolation.

By minimizing disturbance to the resource from adjacent development, and by providing transitional habitat areas, buffers contribute to the health and vitality of functioning habitat areas such as the riparian woodland in this case.

While there is widespread acceptance of buffers as a tool to reduce impacts on habitat resources, there is a wide disparity in accepted buffer distances, oftentimes predicated on the value and sensitivity of adjacent resources, as well as the intensity of adjacent development. Buffer widths found to have been applied in a Monterey Bay region study done for the Coastal Commission ranged in size from 30 to 600 feet.<sup>13</sup> These results are corroborated by a similar literature review study in which found appropriate buffers ranging in size up to about 650 feet.<sup>14</sup> The widest buffers were found to be necessary for high value systems that were adjacent to intense land uses. Of the multiple functions of buffers, the widest buffer widths were directly correlated to the function of preserving species diversity. As an example, the study found that bird species diversity, richness, relative abundance, and breeding numbers were found to be positively correlated with buffer size. Similarly, this study identified an inverse relationship between

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<sup>13</sup> As detailed in "Wetland Buffers in the Monterey Bay Region: A Field Study of Function and Effectiveness," Rosemary Dyste, December 1995. Although this 1995 report focused on wetland buffers specifically, the methodology for determining buffer widths and measuring their effectiveness is applicable to riparian corridors as well.

<sup>14</sup> As detailed in "Wetland and Stream Buffer Size Requirements – A Review" (Castelle, Johnson, and Conolly), *Journal of Environmental Quality* (September – October 1994).



buffer width and degree of impact from human disturbance. As an example, the study indicated that a heavily forested 100-foot buffer distance would be necessary to reduce the noise of a commercial area to background levels. While acknowledging the range of buffer distances studied, the study concluded that a buffer of at least 50 feet was found to be necessary under most conditions.

#### Riparian Exception

Although the proposed project would result in direct impacts to the riparian habitat on the site, the LCP does allow for reductions in required buffers if certain findings can be made. The Applicant contends that an exception is appropriate in this case, primarily based on the lack of space available outside of the riparian corridor and its buffer to construct his proposed project. However, the Applicant's argument is backwards in many ways because the intent of the exception policy is not to justify whatever an applicant proposes, but rather to balance any special site circumstances against LCP requirements – and ultimately to evaluate whether there are less environmentally damaging feasible alternatives that can respond to site specific constraints and circumstances. In addition to the prescribed 60 foot buffer in this case, the LCP is also directive in terms of buffer size and function adjacent to ESHA. The LCP requires that any development adjacent to the riparian corridor “maintain or enhance the functional capacity of the habitat,” and that where this cannot be accomplished, the LCP requires such projects to be redesigned and reduced in scale (LUP Policy 5.1.6). In any case, the LCP requires that “structures shall be placed as far from the habitat as feasible” (LUP Policy 5.1.7).

In this case, there are other feasible alternatives that respect the required buffer (see also finding 7 below). For example, roughly 1,000 square feet of the existing barn footprint (or about 40%) is located outside of the required buffer (see exhibit H). The topography slopes towards the riparian corridor within this footprint area; a front to back differential of roughly 6 feet in elevation (see side view of barn in this area on page 5 of exhibit c). It would be feasible to develop a commercial structure within that portion of the existing profile of the barn located outside of the required setback. Such a structure could have an approximate 1,000 square foot footprint, and could include a partial (due to slope change in this area) to full (with some excavation) lower story, resulting in up to about 2,000 gross square feet.<sup>15</sup> Assuming 400 square feet for storage and loading, such a commercial use might require up to 8 parking spaces per the LCP.<sup>16</sup> In this case, 8 parking spaces could feasibly be constructed inland of the barn footprint and outside of the riparian corridor setback in at least two different configurations; one where there was an access driveway with parking spaces tucked against a retaining wall at the property line, and another where parking spaces would be provided directly off of Old Coast Road supported on a fill slope or elevated on caissons.<sup>17</sup> The fill slope could be vegetated appropriately, and/or the retaining wall/elevated structure could be screened with cascading vegetation. In any case, the spaces would be located as far from the riparian corridor as feasible, while also avoiding the removal of significant trees. In addition, it is

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<sup>15</sup> Note that a 2,000 square foot structure in this footprint would be boxy. However, although some articulation may be desirable (and may lead to less square footage), the existing barn is boxy in the same manner.

<sup>16</sup> LCP section 13.10.552 specifies 1 parking space per 200 square feet of retail. This ratio is generally indicative of commercial parking requirements in the LCP. Some commercial uses, such as restaurants, require more parking spaces (1 per 100 square feet plus 0.3 per employee), and some require less (e.g., art galleries require 1 per 300 square feet).

<sup>17</sup> Note that the Commission's Senior Engineer has evaluated these options and visited the site and deemed them feasible.



possible that all or some project parking could be supplied within the currently unpaved portion of the Old Coast Road right-of-way, if this street edge were improved, and depending on the intensity of use and the parking requirements associated with it. Such a development alternative represents a feasible use consistent with providing for a commercial use principally permitted per the underlying commercial zoning.<sup>18</sup> See exhibit H for a graphic depiction of these areas in relation to the site.

Primarily because there are feasible alternatives that could be developed consistent with the various LCP setback and other requirements, exception findings cannot be made in this case and an exception to the required 60 foot buffer setback is not appropriate. The required exception findings follow in bold, and reasons why they don't apply are briefly highlighted (note that all five findings would need to be made to allow for a lesser setback):

**Finding 1. That there are special circumstances or conditions affecting the property.** Yes, this finding can be made. There are special circumstances because most of the roughly one acre site is occupied by the riparian corridor and the required setback.

**Finding 2. That the exception is necessary for the proper design and function of some permitted or existing activity on the property.** No, this finding cannot be made. There are no permitted or existing activities on the property. The barn has been abandoned for many years. Even if this finding was interpreted to apply to a project *being contemplated* for a permit, as discussed above there are ways that an alternative project could be designed to properly function at this location and respect the required setback (see also coastal development permit determination conclusion for further discussion on this point).

**Finding 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property downstream or in the area in which the project is located.** No, this finding cannot be made. The "public welfare or property downstream" in this case is the riparian corridor and the public trust habitat resources associated with it and the larger San Vicente Creek corridor adjacent and connected to it. The project would result in riparian corridor degradation as detailed above.

**4. That the granting of the exception, in the Coastal Zone, will not reduce or adversely impact the riparian corridor, and there is no feasible less environmentally damaging alternative.** No, this finding cannot be made. As discussed above, the reduced buffer would be expected to reduce the habitat value of the riparian corridor. There are feasible alternatives for development that would allow for the LCP-required buffer to be applied and to better protect the riparian corridor as directed by the LCP for this resource.

**5. That the granting of the exception is in accordance with the purpose of this chapter, and with the objectives of the General Plan and elements thereof, and the Local Coastal Program Land Use Plan.** No, this finding cannot be made. The purpose of the chapter and the objective of the LCP

<sup>18</sup> Note that roughly half of the proposed project square footage and other facilities (e.g., parking) is to support the two proposed residential units, and not to support any principally permitted commercial use on the site.



land use plan is specifically to protect, preserve, and restore riparian corridors. A project that places development closer to the ESHA than is allowed (resulting in lesser protection and greater habitat degradation than a feasible alternative) is not consistent with this purpose and objective.

The riparian exception findings cannot be made in this case, and the 60 foot buffer is required.

The proposed project is inconsistent with the LCP's ESHA and riparian corridor policies prohibiting non-resource dependent development in ESHA, requiring a 60-foot setback from the riparian woodland, and protecting the riparian woodland ESHA overall.

## 2. Davenport's Community Character/Highway One Viewshed

### LCP Requirements

The Santa Cruz County LCP is highly protective of coastal zone visual resources, and specifically protective of the views available along Highway One as it winds through the County from the San Mateo to Monterey County lines. In fact, the LCP states that the public vista from Highway One "shall be afforded the highest level of protection" (LCP Policy 5.10.10). Development is required to be sited outside of the Highway One viewshed if it is feasible; where development is "unavoidably visible," siting and design mitigation measures are required to protect the viewshed, and the unique characteristics of it that make it a scenic resource in the first place (in this case, primarily the Davenport community aesthetic (LCP Policy 5.10.11)). This section of Highway One is also specifically identified as eligible for official designation as part of the California Scenic Highway Program. The north Santa Cruz coast area, including Davenport, represents the grandeur of bygone (in many places) agrarian and wilderness California and is a critical public viewshed for which the LCP dictates maximum protection.

The LCP likewise is protective of the Town of Davenport, calling out this enclave as a "Coastal Special Community" due to its unique character and popularity as a visitor destination; new development is to be subservient to maintaining the community's character (LCP Policy 8.8.2). Within Davenport, all new development is required "to be consistent with the height, bulk, scale, materials and setbacks of existing development: generally small scale, one or two story structures of wood construction" (LCP Policy 8.8.4). The Highway One frontage is to be emphasized as both a rural community center and a visitor serving area where site design is required to emphasize the small scale historic assets of the town (LCP Section 13.20.143(c)(1)(i) and (c)(2), LUP Program 8.8(a)). Davenport is a widely renowned whale watching and visitor destination that has been recognized within the LCP for its special community character – a character within which the subject gateway site plays an important role.

These LCP policies taken together require in effect that the impacts of new development in view of Highway One be minimized, and that new development in Davenport be designed and integrated into the existing community character and aesthetic (see applicable policies in exhibit M). The questions of "small-scale" and Davenport's "community character" are thus central to the Commission's review of this project.

### Character/Viewshed Status





Davenport's tightly clustered residential and commercial development reflect the town's working heritage: whaling industry, agricultural shipping and processing, cement manufacture. In its layout and simplicity of architecture – devoid of pretense – Davenport is strongly reminiscent of other “company” mining or logging towns in the West. Today, the quarrying and processing of limestone for the manufacture of cement remain the economic backbone of the community. Some diversification is offered by small-scale artisan industries. More recently, the two-block commercial strip along the highway frontage continues the process of awakening to the opportunities afforded by the tourist industry.

Currently, the immense RMC Pacific Materials cement plant dominates Davenport. This huge industrial structure can be seen for miles and is in stark contrast to the rest of the town. In fact, notwithstanding the cement plant behemoth, Davenport's commercial frontage could be described as “eclectic frontier rustic” in character based on the variety of building styles, materials, and heights. Remodeling along the highway frontage has more recently injected a more finished facade as seen from the highway. See exhibit B for photographs of the Highway One frontage.

When evaluating the character of an individual development as it relates to other development in a community, a number of factors need to be considered, including structural proportions, layout, exterior finish and any architectural embellishments. Equally important are height, bulk, and other considerations of scale. Critical in this evaluation is the overall scale and intensity of use, because this also directly relates to the amount of square footage and area necessarily given over to parking.

The Commission has recently been directly involved with the last two commercial projects to be approved along Davenport's Highway One frontage where viewshed and character issues were engendered. These projects were the Bailey-Steltenpohl mixed use commercial project across Highway One and slightly upcoast of the site, and the Forester's Hall reconstruction on the inland side of Highway One and about one block upcoast of the site.<sup>19</sup> In both of those cases, the approved development was required to essentially maintain the appearance of what was there before (in size, bulk, and exterior treatment) so as to maintain Davenport's character and the Highway One viewshed. In the Bailey-Steltenpohl case, the Commission prohibited development of the proposed parking lot, and required the approved development to occupy a slightly smaller footprint and profile than that that existed previously (i.e., the footprint and profile was required to be reduced slightly nearest the Highway). In the Forester's Hall case, the development replicated the historic Forester's Hall structure that had been demolished.

In this case, the existing barn has occupied this location for the better part of the last century. The weathered redwood-clad barn is immediately adjacent to Highway One and frames the gateway into Davenport as one enters the town headed north on Highway One. The existing barn is a mix of one (nearest Old Coast Road) and two stories, occupies a roughly 2,600 square foot area on the site and appears to be around 28 feet in height (see photos of barn in exhibit C). It has been abandoned and is falling down. Nonetheless, the rustic barn and surrounding riparian woodland vegetation help to define Davenport's character, and provide a connection to the town's historic past.

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<sup>19</sup> A-3-SCO-98-101 and A-3-SCO-00-106, respectively, both heard by the Commission in 2000.



### Changes Character at this Site

The Applicant's site is one of the most visually prominent parcels in Davenport and thus the visual impacts of the proposed project are of significant concern. The subject site is located at the southern end of Davenport and the existing barn as well as any replacement development signals the gateway to the small town of Davenport to northbound travelers on Highway One. The plateau portion of the site outside of the riparian woodland is completely visible from Highway One, and thus any development on it cannot be sited out of public view as directed by the LCP. Because of this, any development on this site that is "unavoidably visible" from the Highway must be scaled, sited and designed consistent with Davenport's character (see above LCP policy discussion; in particular LCP objective 5.10.b, and policies 5.10.3, 5.10.10, and 5.10.11).

The Applicant proposes to demolish the barn, remove a 5-foot diameter and roughly 70-foot tall eucalyptus tree, and construct a new building and parking lot on the site. The new main building that would be constructed on the site would occupy a footprint of roughly 2,200 square feet, and would have an overall bulk, including decks, of roughly 6,400 square feet.<sup>20</sup> The structure would be 3 stories with a maximum height of roughly 37 feet.<sup>21</sup> The building would be faced with stucco on the first floor, and clad with redwood board and bat for the top two floors. The parking lot area would occupy approximately 4,700 square feet immediately adjacent to the Highway. A six foot high fence would be constructed along the break in slope at the southeast edge of the plateau, transitioning into a 6-foot high stucco wall for that portion due west of the proposed building (see exhibit D). Although the fence would be partially screened from view by the riparian corridor (in northbound views) and slope change (in southbound views) it would still introduce a stark structure where none exists now, particularly the stucco wall portion of it.

The Applicant's photo simulations and the photos of the project staking required by the County give a general sense of the area that would be occupied by the proposed main structure (see exhibits C and E).

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<sup>20</sup> Note that there has been confusion over the amount of square footage proposed. Part of the reason for this is because the project includes a substantial area of wrap-around decks (and covered walkway/outdoor space for the 1<sup>st</sup> floor). Interior space proposed is 4,316 square feet. Decks and covered walkway/outdoor space proposed is 2,084 square feet. The style of the wrap around decks proposed are such that they contribute significantly to the sense of bulk proposed. Therefore, in order to give a sense of numerical magnitude to the proposed project bulk, the covered walkway/outdoor space area surrounding the first floor (812 square feet) was added to the first floor interior space (1,420 square feet) to arrive at a gross structural footprint of 2,232 square feet, and the interior square footage (4,316 square feet) was added to the exterior decks and covered walkway/outdoor space square footage (2,084 square feet) to arrive at a bulk estimation of roughly 6,400 square feet. This is different than, and can be differentiated from, interior square footage. See approved plans in exhibit D. See also Applicant's January 28, 2003 submittal and Commission Staff's response to it regarding this point (exhibits F and G respectively).

<sup>21</sup> Again, there has been confusion on the overall height proposed. The [proposed project plans show the height to be in excess of 35 feet, with a maximum grade to pitch height of 37 feet (see approved plans in exhibit D). In the time since this item was appealed, the County subsequently indicated that the Applicant agreed to lower the height (to 32 feet 4 inches on the west elevation and 34 feet 8 inches on the east elevation); that this lower height is what is shown on the project flagging, staking, and photo simulations (see exhibits C and E); that it was the lower height that was reported to the Planning Commission when they approved the project; and that although there was no written condition or requirement, that the County would enforce the lower height through their coastal permit (personal communication from County planning staff). Nonetheless, the proposed project plans do not show this lower height and any unwritten arrangements with the County carry no force or validity in this de novo review by the Commission. The barn appears to be around 28 feet in height. The Applicant asserts that the barn is about 30 feet in height and that the proposed structure would be about 5 feet taller. Given the uncertainties, an exact difference in height is difficult to measure. Suffice it to say that the proposed building would be taller by five feet than the existing barn, and maybe more. Again, see also Applicant's January 28, 2003 submittal and Commission Staff's response to it regarding this point (exhibits F and G respectively).



However, the staking and photo simulations underestimate that change proposed because: the project staking did not include all structural elements (such as all wraparound decking) and was keyed to a lesser height than that shown on the proposed project plans; the photo simulations omit vehicles parked in the large parking area that would be a dominant visual element immediately adjacent to the Highway; and neither include the 6 foot stucco wall/fence along the plateau's edge.

In sum, the proposed project would substantially alter the Highway One viewshed inconsistent with protecting Davenport's character. In fact, in several ways, the proposed project exceeds both the LCP's Countywide maximum scale thresholds as well as those pertaining explicitly to Davenport, and includes design features antithetical to LCP requirements for Davenport. The maximum height in a commercial district is 35 feet, and the proposed plans show that the main building exceeds this maximum by 2 feet since a 37-foot height has been proposed. The required front yard setback is not met.<sup>22</sup> Stucco is proposed for the first floor exterior treatment and yard enclosure wall when the LCP identifies wood. Three stories have been approved when the applicable LCP policy states "require new development to be consistent with the height bulk, scale, materials and setbacks of existing development: generally small scale, one or two story structures of wood construction." Other than the cement plant itself, there are no 3-story structures in Davenport. In fact, the overwhelming majority of structures in Davenport are 1-story. Even along the main Highway One commercial frontage, where one might expect larger commercial buildings, there is a fairly even mix of both 1-story and 2-story structures (see exhibit B).

Further, Countywide maximums and minimums must be understood within the special site context and its location relative to the Davenport and the Highway One viewshed. Countywide maximum considerations of mass and scale (such as height and bulk) are not entitlements, but rather maximums that may need adjustment in light of resource constraints (riparian corridors, public viewshed concerns, special community character, etc.). While developing to the maximum scale and bulk may be appropriate in less visually prominent, more urban parts of the County, it is inappropriate here because of the unique site and specialized LCP policies discussed above. The more important thing to consider on this site is the change to what is there currently, and the effect of that change on the Highway viewshed and Davenport's character.

## Conclusion

The existing weathered and rustic barn helps to define Davenport's character and the Highway One viewshed. Removing it and replacing it inland with a larger and taller structure of a completely different design will definitely alter the character of the town. The proposed main structure is too large for the site and Davenport; it is taller and bulkier than the existing barn and located in a portion of the site that would

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<sup>22</sup> Because the site is a corner lot, the LCP allows the Applicant to choose which yard is the front yard for setback purposes (i.e., Highway One or Old Coast Road). The proposed plans indicate that the Old Coast Road was considered the front yard. If Old Coast Road is the front, then the minimum front yard setback for a commercial site fronting or across the street from a residential district (such as this site) is 20 feet, and the Applicant proposes a 12 foot setback. If Highway One is considered the front yard, as the County indicates could be the case, then the required front setback is 10 feet while the proposed project plans show this to be a zero foot setback. Note that the plans show a 10 foot setback from the Highway One right-of-way, but that apparently the right-of-way line is incorrect on the proposed project and is actually roughly 10 feet inland from this identified line (personal communication from the Applicant to Commission staff on May 7, 2003). As a result, the project does not meet front setback requirements in either case.



increase massing visible in the Highway One viewshed, particularly the northbound view corridor where it would be starkly visible due to its direct exposure. The proposed parking lot would be constructed along the Highway frontage in the same general area as the existing barn but in a larger footprint (nearly double the footprint of the barn), at roughly the elevation of the Highway. The parking lot would introduce a formal paved area and a strip of parked cars at this gateway location into Davenport that would be extremely prominent in the Highway One viewshed. In the Bailey-Steltenpohl project, the Commission found that the siting of a parking lot immediately adjacent to the Highway One corridor was intrusive and not in keeping with the character of Davenport. Parking for that project was reduced and relocated to a less visible portion of the site. Such a reduction and relocation is feasible and would also be appropriate here. The 70-foot tall, 5-foot diameter eucalyptus that would be removed has a towering canopy that currently helps define the gateway into town heading north; its removal will leave a hole in the canopy not only at this site but in terms of framing the town itself from the critical northbound Highway One vantage point.<sup>23</sup>

The proposed project is overly ambitious in scale in light of its prominent location, and in light of the existing built and natural character of the site, including the riparian woodland (as detailed in the preceding findings). The new building would be a new large structure highly visible in the northbound Highway One viewshed, and the new parking lot would place a line of parked cars at the Highway's edge that would detract from the scenic quality of the viewshed. Neither of these project elements is consistent with the LCP policies for protecting the Highway One viewshed. By the same token, the proposed development would introduce a decidedly large scale development into Davenport's small scale Highway One aesthetic and is inconsistent with the LCP policies protecting Davenport character.

### 3. Highway One/Davenport Traffic and Circulation

#### LCP Requirements

Santa Cruz County's north coast area is a stretch of mostly undeveloped Central Coast that represents the grandeur of a bygone (in many places) agrarian setting and coastal wilderness California that attracts visitors to it. Davenport itself is an important visitor destination; its proximity to Santa Cruz heightening its appeal in this regard. Highway One is the primary (and in some places only) means of travel on the north coast, and is thus widely used by visitors and those otherwise seeking to enjoy the region's coastal resources.

The LCP contains a series of interwoven policies which, when taken together, reinforce and reflect the Coastal Act mandate to maximize public access and recreational opportunities, protect existing public access and encourage public access and recreational enhancements (such as public parking, trails, and other facilities) to increase enjoyment of coastal resources and to improve access within the coastal region (LCP Chapters 3 and 7). The LCP also targets Davenport for specific enhancements, such as clear parking and circulation (including IP Section 13.20.143 et seq). The LCP establishes a priority of uses within the coastal zone where recreational uses and facilities are a higher priority than residential uses, and the LCP prohibits the conversion of a higher priority use to a lower priority use (LCP Policy 2.22 et

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<sup>23</sup> See page 3 of exhibit c for a photo of the tree to be removed.



seq); in road improvement projects, priority is given to providing recreational access (LCP Policy 3.14 et seq). Existing public access use is protected (LCP policy 7.7.10). See exhibit M.

#### Highway One Davenport Frontage

Highway One is currently a two-lane road through Davenport. The project is located at the inland corner of the intersection of Highway One with Davenport Avenue and Old Coast Road; the first Davenport streets that are encountered when traveling along northbound Highway One. This intersection is oddly configured in that both Davenport Avenue and Old Coast Road meet Highway One at roughly the same point on Highway One (see exhibits A and D). As a result, the intersection is confusing for vehicles both turning onto and off of Highway One.

Davenport's two-block main commercial frontage is located just past the project intersection to the north. The area between the Highway travel lanes and the main commercial buildings inland is used primarily for perpendicular parking adjacent to the Highway. There are no stoplights or stop signs along Highway One through Davenport. Visitors park along both sides of the Highway and access businesses on the inland side as well as the bluffs and beach on the seaward side of the Highway. As a result, there is substantial ingress and egress onto the Highway through the town, and there is also substantial pedestrian crossing of the Highway. Highway One crests in elevation roughly in the center of the main commercial strip. These factors together create an awkward, and potentially dangerous, circulation situation within the Highway through the town that already affects public access to Davenport and along Highway One. In referring to this main Highway One frontage, the Applicant's consulting traffic engineer concludes that "the existing parking configuration and circulation presents operational and safety deficiencies."<sup>24</sup>

#### Project Intersection with Highway One

The proposed project would introduce new commercial and residential uses that would result in new trips to and from the project site. Such trips would be almost exclusively through the already confused Davenport Avenue and Old Coast Road intersection with Highway One. The Applicant's traffic analysis indicates that there wouldn't be any adverse impacts on traffic and circulation in Davenport, and Caltrans, after several years of raising concerns, recently concurred.<sup>25</sup>

However, as partially evidenced by Caltrans' original comment letters and by the Applicant's consulting traffic engineer's conclusion regarding the Davenport commercial frontage as a whole, this intersection and Davenport's Highway One frontage are already confused, and the additional increment in traffic due to the proposed project would only exacerbate this problem. Furthermore, the Applicant's traffic analysis that dismissed traffic and circulation impact (and on which Caltrans based its changed position)

<sup>24</sup> Higgins and Associates January 24, 2003 report. Note that the reference to operational and safety deficiencies was made in 1996. Since that time, there have not been any major changes to the Highway and/or parking along it. However, traffic on the Highway has increased, Davenport's lure as a visitor destination has also increased, and two new commercial operations were approved by the Commission in 2000 that, when constructed, will increase visitor trips and stops in this main frontage.

<sup>25</sup> Note that Caltrans repeatedly informed the Applicant that the proposed project's traffic issues with respect to the intersection were inadequately addressed (in letters dated June 20, 2000, March 7, 2001, and October 5, 2001). Caltrans retracted their concerns by letter dated January 31, 2003 after this matter was appealed to the Commission and based on the Applicant's January 24, 2003 traffic analysis. See Caltrans comment letters in exhibit L.



underestimates traffic associated with the project and is itself based on an outdated report that is not indicative of the traffic at this intersection. On the first point, the Applicant's traffic analysis is based upon the project providing 1,420 square feet of retail commercial space. However, the proposed project includes roughly double this amount of commercial retail square footage.<sup>26</sup> Because of this, the traffic analysis underestimates by roughly half the amount of retail commercial traffic that would be expected due to the project. In other words, using standard trip generation rates, traffic due to the proposed project would be roughly double that estimated by the Applicant's traffic analysis.

On the second point, the Applicant's traffic analysis bases its findings on a 1996 traffic report done in support of the proposed Bailey-Steltenpohl project across the street. The problem with this is that the project that was approved by the Commission in the Bailey-Steltenpohl case in December 2000 was extremely different, particularly in a traffic/circulation sense, than that that was originally proposed (and was the subject of the 1996 report). The main traffic/circulation difference is that instead of a main parking lot further upcoast on the Davenport frontage (opposite Center Avenue), with a service oriented accessway near Davenport Avenue (as proposed originally), the Commission-approved project removed the upcoast parking lot and required all parking and site access to the project to occur opposite Davenport Avenue; the intersection thus to become a 5-legged intersection. In other words, all traffic associated with the Bailey-Steltenpohl project will be directed to the project intersection that would be used by this project – this is not reflected in the Applicant's traffic analysis. Furthermore, the project intersection is expected to change soon because the permittee in the Bailey-Steltenpohl case is also working with Caltrans on potential Caltrans-required turn channelization lanes (in both directions) within the Highway right-of-way; these changes within the Highway prism, and their potential for further exacerbating conditions at the project intersection, were not accounted for in the Applicant's traffic analysis.

The proposed project's parking lot is also located extremely close to the project intersection and immediately adjacent to Highway One (see exhibit D). As a result, all vehicular access onto and off of Old Coast Road to the project site itself would be almost directly on top of the already constrained 5-legged intersection. This will present queuing problems on both directions of Highway One (from those drivers to the proposed facility attempting to access Davenport Avenue/Old Coast Road and the facility either via a hairpin northbound turn or an across the Highway southbound turn), and from those attempting to leave the proposed parking lot area (inasmuch as they must exit onto Old Coast Road and then immediately cross Davenport Avenue at the intersection with Highway One). These problems would be exacerbated because patrons of the proposed project would be expected to be visitors to Davenport unfamiliar with the strangely configured project intersection and how best to navigate it.

## Conclusion

The proposed project would increase traffic and queuing at an already confused intersection at the fringe of Davenport's main commercial frontage that is already poorly integrated with Highway One (i.e., with pull-off and on parking immediately adjacent to the Highway) within an area (Davenport) that is growing as a commercial visitor destination (including recently permitted visitor serving and commercial development across Highway One from Davenport Avenue). The Applicant's traffic analysis seriously

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<sup>26</sup> Estimated by the County to be 2,896 square feet of commercial space with 816 square feet of that for commercial decks.



underestimates traffic that would be associated with the proposed project – which would be expected to be roughly double that estimated. Vehicular access to and from the project has likewise not been clearly addressed by the Applicant's traffic analysis within the context of changes to be made to this intersection and increased traffic associated with the already permitted Bailey-Steltenpohl case. As a result, it underestimates traffic at the intersection, and doesn't reflect potential physical changes to be made to the intersection (such as turn channelization) and their effect on congestion at the project intersection. Circulation in and through Davenport is already problematic because of the way the Highway bisects the town with parking areas immediately on the Highway shoulder. The project would adversely impact access along Highway One, would confuse circulation within Davenport, and adversely affect Davenport's character (by increasing congestion and decreasing safety) inconsistent with the LCP. The traffic associated with the residential use in particular is a lower LCP priority than public access and visitor commercial use of the Highway, and displacing or adversely affecting these higher priority uses in a prime visitor destination for a lower priority use is not consistent with the LCP.

The proposed project is inconsistent with the LCP's public access and recreation policies particular to Highway One use through Davenport.

#### 4. Water Quality

##### LCP Requirements

The LCP protects the water quality of the on-site riparian corridor, San Vicente Creek, and the Monterey Bay (including the aforementioned LCP habitat policies and Policies 5.4 et seq, 5.7 et seq, and 7.23 et seq; see exhibit M). The project site drains down through the on-site riparian corridor to a bench area above San Vicente Creek (at the end of Fair Avenue), and then through a highway-side riparian woodland corridor to the Creek itself to the east, and ultimately from there onto the Monterey Bay (see page 11 of Exhibit D).

At a minimum, San Vicente Creek is known habitat for State and Federally listed coho salmon, steelhead salmon, and red-legged frog,<sup>27</sup> and the California Fish and Game Commission has designated San Vicente Creek as an endangered coho salmon spawning stream. The National Marine Fisheries Service (NMFS) indicates that San Vicente Creek is the southern-most creek where coho salmon is still extant in its entire North American range, and that protection of this creek is therefore of significant importance. The California Department of Fish and game (CDFG) echoes NMFS concerns in this regard, and have asked development not be approved without an understanding of such development's potential impact to San Vicente Creek.

##### Project Inadequately Protects Water Quality

The proposed project would collect site drainage, direct it through a standard silt and grease trap, then direct it through a pipe down through the riparian woodland to the base of the riparian slope where it would be outletted and expected to enter the highway-side corridor and then onto San Vicente Creek and

<sup>27</sup> Coho are State-listed as an endangered species and Federally listed as a threatened species, steelhead are Federally listed as a threatened species, and red-legged frog are Federally listed as a threatened species and State listed as a special concern species.



the Pacific Ocean. Runoff from the site would be expected to contain typical runoff elements associated with urban residential and commercial development, including a parking lot. Urban runoff is known to carry a wide range of pollutants including nutrients, sediments, trash and debris, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics (such as pesticides and herbicides).<sup>28</sup> Urban runoff can also alter the physical, chemical, and biological characteristics of water bodies to the detriment of aquatic and terrestrial organisms. Pollutants in the runoff would be filtered to a degree by the silt and grease trap proposed. From the outlet point at the base of the riparian corridor slope, the runoff would also be bio-filtered to a degree by the riparian vegetation extending from the outlet point to San Vicente Creek.

The standard silt and grease trap proposed would act as small sediment holding basin, but is incapable of filtering and treating runoff to remove typical urban runoff pollutants. Although the trap proposed would perform a gross filtering function, the runoff that would exit from the trap would still be expected to contain pollutants of concern.<sup>29</sup> This partially filtered runoff would be directed to the riparian corridor below, where additional pollutants would settle out, and would ultimately make its way to San Vicente Creek and on to the Pacific Ocean.

The use of a standard silt and grease trap to adequately protect riparian woodland ESHA and the ultimate receiving waterbodies from polluted runoff due to the project is inappropriate because such a unit is not sufficiently capable of removing typical runoff pollutants. In addition, relying on the riparian woodland ESHA to filter and treat pollutants due to the project is also inappropriate. It is incumbent upon the project to filter and treat its runoff *prior to* its delivery to either the riparian corridor (at the outlet point) or ultimately San Vicente Creek and/or the Pacific Ocean. At a minimum, urban runoff pollutants would be added into the riparian corridor downstream of the outlet pipe (between the pipe and San Vicente Creek); this ESHA area would be expected to suffer as a result. Depending on the degree to which the riparian vegetation neutralized these constituent pollutants, remaining pollutants would make their way into San Vicente Creek (and then the Pacific Ocean) and this ESHA would likewise be expected to suffer as a result.

In sum, the project would generate typical urban runoff (including in particular runoff including vehicular wastes from the 4,700 square foot parking lot proposed). That runoff would be directed to on and off site ESHA areas following only gross filtration at the silt and grease trap. In other words, the proposed project relies on the on and off site ESHAs to filter and treat typical pollutants generated by the project. These ESHAs would be degraded proportionally as a result. This is inappropriate and inconsistent with the LCP ESHA and water quality requirements.

## 5. Water and Sewer Service

In addition to the above-mentioned water quality and habitat LCP policies, the LCP designates San

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<sup>28</sup> Pollutants of concern found in urban runoff include, but are not limited to: sediments; nutrients (nitrogen, phosphorous, etc.); pathogens (bacteria, viruses, etc.); oxygen demanding substances (plant debris, animal wastes, etc.); petroleum hydrocarbons (oil, grease, solvents, etc.); heavy metals (lead, zinc, cadmium, copper, etc.); toxic pollutants; floatables (litter, yard wastes, etc.); synthetic organics (pesticides, herbicides, PCBs, etc.); and physical changed parameters (freshwater, salinity, temperature, dissolved oxygen).

<sup>29</sup> If the trap were not regularly maintained, then even its gross filtering capabilities would be negated.





Vicente Creek as a Critical Water Supply Stream that is currently being used at full capacity, requires adequate stream flows to protect anadromous fish runs, including restoration of same if in-stream flows are inadequate for fisheries, and prohibits additional withdrawals of water from designated Critical Water Supply Streams (LCP Objective and Policies 5.6 et seq). The LCP requires that development be evaluated for its potential to impact water supply and wastewater systems, and that a commitment to provide water and wastewater services to the project be demonstrated (LCP Policies 7.18.2, 7.18.3, and 7.19.1). See exhibit M.

The approved project would require 3 new wastewater and 3 new water hookups (i.e., one for each of the 2 residential units and one for the commercial use) from the Davenport County Sanitation District (DCSD).

DCSD gets its water from RMC Pacific Materials which gets its water from both San Vicente Creek and Mill Creek. The State Water Resources Control Board recently completed an investigation of RMC's right to withdraw water from San Vicente and Mill Creeks that concluded, among other things, that RMC does not have a riparian right and appears to have only a partial appropriative water right (pre-1914) to divert water from the two creeks, that RMC appears to have diverted water in excess of the pre-1914 right, and that approximately 30% of the water diverted was spilled and not used for a beneficial use.<sup>30</sup>

As mentioned above, San Vicente Creek provides habitat for such State and Federally listed species as coho, steelhead, and red-legged frog. It is not clear at present time whether existing water withdrawals are leading to listed species habitat degradation, nor is it clear whether the additional water allotted to the proposed development in this case would exacerbate any such impacts or cause impacts of its own. In fact, the Commission is not aware of any comprehensive evaluations, whether in this project context or otherwise, of habitat impacts due to the RMC's water diversion activities on the San Vicente Creek.<sup>31</sup> That said, recent actions indicate the concern over this issue. For example, on the Trust for Public Land's (TPL's) Coast Dairies property surrounding Davenport (a property that includes in part San Vicente Creek), NMFS and CDFG this year have gone as far as to inform TPL that all agricultural diversions should stop immediately due to their harm to fisheries resources.

In terms of wastewater, the wastewater system in Davenport has limited capacity, and the amount of wastewater that can be treated at the current time appears to be tied directly to the amount of treated wastewater that can be used by RMC Pacific Materials in their cement plant operations. DCSD has recently raised concerns that any curtailment of production capacities for RMC could lead to overflow of wastewater from their sewage holding lagoon. The Commission is currently considering an appeal of a County decision granting RMC a production increase, but this matter has not yet been resolved and it is unclear as to what effect it may have on water supply or wastewater treatment in Davenport (pending

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<sup>30</sup> State Water Resources Control Board, December 27, 2001.

<sup>31</sup> Note that the State Board Investigation from December 2001 did not include such an evaluation, noting that such an evaluation was beyond the scope of that investigation due to limited State Board resources available to develop the required body of evidence. The State Board investigation did indicate, however, that if valuable public trust resources exist in a stream, if these resources are being adversely affected by diversions, and if modification to diversions would help alleviate such impacts (all of which may be the case for San Vicente Creek), then the Board can step in to reallocate water for beneficial uses.



appeal A-3-SCO-02-088).

### Conclusion

The larger issues regarding water supply/water withdrawal and wastewater capacity in Davenport are unresolved. That said, these larger issues are beyond the ability of this single applicant to resolve. In this case, the Applicant received the necessary commitment to serve the project from DCSD.<sup>32</sup> As such, the proposed project is consistent with the LCP's public service water and wastewater requirements. That said, to the extent the proposed project would exacerbate water and wastewater impacts, a project smaller in scope (and resulting in less water use/wastewater generation), would have a lesser impact in this regard.

### 6. Cumulative Impacts

The LCP requires that development not adversely affect, individually or cumulatively, coastal resources (LCP Policy 2.1.4 – see exhibit M), including the coastal resources thus far discussed in these findings. There are a number of commercial projects either permitted (e.g., the aforementioned Bailey-Steltenpohl and Forester's Hall projects) or pending (e.g., the aforementioned RMC Pacific Materials cement plant projects) in Davenport. All of these projects are either under construction (i.e., Bailey-Steltenpohl) or could be in the reasonably foreseeable future. Their combined effect on coastal resources when considered along with the proposed project could lead to cumulative impacts to the types of coastal resources detailed in the findings above. In particular, and probably of most direct relevance since the other permitted project's community character issues were resolved, Davenport's Highway One circulation (both through traffic and those visiting the town) would be cumulatively worsened by the contribution of this proposed project. This would be particularly the case at the Highway One, Old Coast Road, Davenport Avenue intersection. Ramifications would also be felt through the entire Highway frontage as increased numbers of visitors are drawn to the proposed project and to the permitted Bailey-Steltenpohl and Forester's Hall commercial projects. See also findings above in this regard. The proposed project is inconsistent with the LCP's cumulative impacts policy.

### 7. LCP Consistency Conclusion and Project Alternatives

The proposed project is located at a critical gateway site along Santa Cruz County's north coast in Davenport, a LCP-designated special community whose character is to be protected. The proposed project is inconsistent with protection of: the riparian woodland ESHA; Davenport's character; the Highway One viewshed; Highway One circulation and public access associated with it; and water quality. In sum, the proposed project is overly ambitious in scale for the site and surrounding resources, it will adversely impact the character of Davenport and the Highway One viewshed, it will negatively impact circulation and public access through Davenport, and it will not adequately protect water quality. As such, and as detailed in the preceding findings, the proposed project is inconsistent with the certified LCP.

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<sup>32</sup> Note that this will serve was issued on April 29, 2002 and expired on April 29, 2003 (i.e., in the time since this matter was appealed to the Commission). That said, there is no evidence in the file to indicate that DCSD would not extend this will serve, having already done so previously with this project due to the length of time that it was in the County's review process.



There are modifications that could be made to the proposed project to address these LCP inconsistencies by maintaining the required riparian setback and by developing a smaller scale commercial development with a lesser intensity of use (and with a corresponding reduced intensity of parking, traffic generation, polluted runoff generation, water use, and wastewater generation) that more clearly reflected the small scale character of Davenport and that was cognizant of the special gateway location adjacent to the Highway One corridor.

The main two parameters would be to establish a footprint area and scale for the development. The first parameter for such an alternative project is to remove development from the required riparian setback. This results in an area nearest Old Coast Road within which development could be pursued. Once such a development envelope is established, the next issue to address is establishing parameters for addressing Davenport character and Highway One viewshed issues. In the two most recent Commission decisions where these issues were engendered in Davenport, the Commission required the new development to essentially maintain the appearance of what was there before (in size, bulk, and exterior treatment) so as to maintain Davenport's character and the Highway One viewshed.<sup>33</sup> Taking these two parameters together, a main structure footprint and profile can be established that occupies the roughly 1,000 square foot footprint of the existing barn footprint that is located outside of the required buffer (see exhibit H). The topography slopes towards the riparian corridor within this footprint area; a front to back differential of roughly 6 feet in elevation (see side view of barn in this area on page 5 of exhibit c). It would be feasible to develop a commercial structure within that portion of the existing profile of the barn located outside of the required setback. Such a structure could have an approximate 1,000 square foot footprint, and could include a partial (due to slope change in this area) to full (with some excavation) lower story, resulting in up to about 2,000 gross square feet. Note for comparison that in the Licursi Forester's Hall case reviewed by the Commission in 2000, the approved commercial use occupied approximately 1,800 square feet..

The corresponding development necessary to serve such a use is parking. With a 2,000 square foot commercial operation, and assuming roughly 400 square feet for storage and loading, such a commercial use might require up to 8 parking spaces per the LCP.<sup>34</sup> In this case, 8 parking spaces could feasibly be constructed inland of the barn footprint and outside of the riparian corridor setback on the Applicant's property in at least two different configurations; one where there was an access driveway with parking spaces tucked against retaining wall at the property line, and another where parking spaces would be provided directly off of Old Coast Road supported on a fill slope or elevated on caissons.<sup>35</sup> The fill slope could be vegetated appropriately, and/or the retaining wall/elevated structure could be screened with

<sup>33</sup> As discussed above, the Bailey-Steltenpohl project in the former Odwalla building across Highway One from this site and the reconstruction of Forester's Hall directly upcoast from here (A-3-SCO-98-101 and A-3-SCO-00-106, respectively; both heard by the Commission in 2000). In the Bailey-Steltenpohl case, the approved development was required to occupy a slightly smaller footprint and profile than that that existed previously (i.e., the footprint and profile was required to be reduced slightly nearest the Highway). In the Forester's Hall case, the development replicated the historic Forester's Hall structure that had been demolished.

<sup>34</sup> LCP section 13.10.552 specifies 1 parking space per 200 square feet of retail. This ratio is generally indicative of commercial parking requirements in the LCP. Some commercial uses, such as restaurants, require more parking spaces (1 per 100 square feet plus 0.3 per employee), and some require less (e.g., art galleries require 1 per 300 square feet). Depending on the precise dimension of the structure and the nature of the use, parking requirements thus could be more or less than this.

<sup>35</sup> Note that the Commission's Senior Engineer has evaluated these options and visited the site and deemed them feasible.



cascading vegetation. In addition, it is possible that all or some project parking could be supplied within the undeveloped portion of the Old Coast Road right-of-way, if this street edge were improved. In any case, the spaces would be located as far from the riparian corridor as feasible, while also avoiding the removal of significant trees. See exhibit H.

Once the primary siting and size parameters are so established, other mitigations could be added to address other LCP inconsistency issues (e.g., a design and materials palette based on the existing weathered barn could be specified; vegetation parameters for both screening and buffer purposes could be established; advanced water quality filtration and treatment devices and methods could be employed outside of the riparian woodland, etc.). The lesser scale and intensity of use that would respond to these parameters would help to mitigate Highway One traffic and congestion issues (particularly at the project intersection) and cumulative impacts.

However, the proposed project is not even close to meeting these parameters, and it would require fundamental changes in the project design to do so. Many details, such as parking requirements, would be dependent on the exact size and nature of the commercial use proposed; the interplay between intensity of use and parking requirements may shape the commercial project as well. Setback variances to Old Coast Road may need to be considered.<sup>36</sup> Any Highway One right-of-way issues (depending on which yard is chosen as the front yard) would need to be addressed. If a portion of the project were given over to residential use (up to 50% is allowed in the C-1 zoning district), then that too would affect the overall project parameters. Because of the degree to which the proposed project would need to be fundamentally modified, and indeed changed completely, and the range of possible project permutations affecting the details, it is inappropriate to attempt to craft mitigating conditions that would do so in this case. Rather, it is incumbent on the Applicant to propose an alternate project mindful of these parameters that can go through a normal coastal permit review at the County.

Therefore, because the proposed project is inconsistent with the LCP as described in the above findings, the proposed project is denied. Such denial is without prejudice inasmuch as there are feasible project alternatives that could be pursued on this site that could be found consistent with the LCP, as discussed above.

## D. California Environmental Quality Act (CEQA)

Pursuant to CEQA section 21080(b)(5) and CEQA Guidelines section 15270, denial decisions are not subject to CEQA. To the extent it can be argued that CEQA does apply to denial decisions, the following is provided.

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed

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<sup>36</sup> For example, it is possible that some variations to achieve articulation or character embellishment might be necessary at the Old Coast Road side of such a footprint and profile, and that there may be a slight incursion into this required setback (depending on what the setback is, which depends on which the Applicant chooses as the front yard).



development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The County, acting as the lead CEQA agency, circulated a proposed negative declaration under CEQA for the proposed project in April of 2002. Prior to that time, in early coordination with County staff, Commission staff had already provided feedback and recommendations on the project to the County and the Applicant describing the same types of LCP inconsistencies detailed in this report;<sup>37</sup> these comments were reiterated and elaborated upon in both formal CEQA comments from Commission staff<sup>38</sup> and through a series of follow-up meetings (including at the site), phone conversations, and emails with County staff in late 2002 prior to the County taking action on the proposed project. Ultimately, the project was not altered in light of staff comments, and the County certified the CEQA negative declaration as part of its project approval in November 2002.

In any case, the Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This report has discussed the relevant coastal resource issues with the proposal. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, there are less environmentally damaging feasible alternatives to the proposed project (in addition to the no project alternative), and feasible project mitigation measures to achieve them, that would better protect the environment.

As such, there are additional feasible alternatives and feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project would have on the environment within the meaning of CEQA. Thus, the proposed project will result in significant environmental effects for which feasible mitigation measures have not been employed inconsistent with CEQA Section 21080.5(d)(2)(A). Therefore, the project is not approvable under CEQA and is denied.

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<sup>37</sup> By letter dated June 8, 2000, see exhibit J.

<sup>38</sup> By letter dated May 20, 2002, see exhibit J.

